UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/SR.1678
23 September 1998

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Sixty-third session

SUMMARY RECORD OF THE 1678th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 16 July 1998, at 3 p.m.

Chairperson: Ms. CHANET

later: Mr. EL SHAFEI
(Vice-Chairperson)

later: Ms. CHANET
(Chairperson)

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GE.98-16950 (E)

The meeting was called to order at 3.15 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 5)

Draft General Comment on article 12 of the Covenant (document without a symbol distributed in the conference room)

1. The CHAIRPERSON invited the members of the Committee to consider and to adopt, paragraph by paragraph, the draft General Comment on article 12 of the Covenant which had been prepared by the pre-sessional Working Group on article 40.

2. Mr. KLEIN, Chairman/Rapporteur of the Working Group on article 40, said that the text of the draft General Comment on article 12 of the Covenant was the result of consultations and exchanges that had taken place among the members of the Committee subsequent to its sixty-second session held in New York in March-April 1998. Editorial changes could, as required, be made by the Secretariat.

Paragraph 1

3. After an exchange of views in which Lord COLVILLE, Mr. ANDO, Mr. KRETZMER, Mr. BHAGWATI, Ms. EVATT, Mr. BUERGENTHAL and Mr. KLEIN took part, the CHAIRPERSON said that the Committee had decided to delete paragraph 1 of the draft General Comment.

Paragraph 2

4. After an exchange of views in which Mr. KRETZMER, Mr. BHAGWATI, Mr. POCAR, Mr. KLEIN, Lord COLVILLE, Mr. EL SHAFEI, Mr. BUERGENTHAL, Mr. ZAKHIA, Mr. ANDO and Mr. LALLAH took part, it was decided, on the proposal of Ms. MEDINA QUIROGA, that paragraph 2 should be reworded to read:

> "Liberty of movement is an indispensable condition for the free development of a person. It also interacts with other rights enshrined in the Covenant, as is often shown in cases before the Committee."

5. Paragraph 2, as orally amended, was adopted.

Paragraph 3

6. Mr. KRETZMER suggested that, in the second sentence, the reference to the State should be removed in order to bring the wording closer to that of article 12, paragraph 3.

7. Mr. POCAR suggested that the second sentence should be reworded in order to specify that limitations must not nullify the principle of freedom of movement.

8. Paragraph 3, as orally amended by Mr. Kretzmer and Mr. Pocar, was adopted.

9. Mr. El Shafei, Vice-Chairperson, took the Chair.

Paragraph 4

10. Mr. KLEIN, Chairman/Rapporteur of the Working Group on article 14, said that the part of the first sentence in square brackets was intended to highlight the changes with regard to freedom of movement that had occurred in several States parties during the 1990s.

11. Ms. MEDINA QUIROGA said she thought that the Committee should focus the entire paragraph on the States parties' obligation to supply information on the relevant legislation and its application in practice. Consequently, the first sentence could be deleted and the second amended so as to emphasize the need for the States parties to supply all the necessary information in their periodic reports.

12. Mr. BUERGENTHAL said he agreed with Ms. Medina Quiroga and suggested that it should also be stressed that, States parties' reports very often did not contain sufficient information on the issue.

13. Paragraph 4, as amended along the lines suggested by Ms. Medina Quiroga and Mr. Buergenthal, was adopted.

Paragraph 5

14. Mr. BHAGWATI proposed that the words "In principle" at the beginning of the second sentence should be deleted since they were pointless.

15. Mr. KLEIN, supported by Lord COLVILLE and Mr. BUERGENTHAL, said that, on the contrary, the words in question were perfectly appropriate in the sentence, inasmuch as a citizen could be unlawfully within the territory of his home State.

16. Ms. Chanet resumed the Chair.

17. Mr. KRETZMER said he wondered whether a State could admit an alien to its territory and then subject him to temporary or local restrictions.

18. After a discussion on the topic in which Mr. YALDEN, Ms. EVATT, Mr. BHAGWATI and Mr. KLEIN took part, the CHAIRPERSON drew the attention of the members of the Committee to a problem of substance. It was not for the Committee to explain in detail what restrictions could be imposed under national law. Under its mandate, the Commission should limit itself to what was stated in article 12, paragraph 3, of the Covenant. Consequently, the fourth and fifth sentences were inappropriate.

19. Mr. KRETZMER proposed that the third sentence of the paragraph be amended to read:

> "The question whether an alien is 'lawfully' within the territory of a State is a matter governed by domestic law, by virtue of which the entry of aliens may be subject to restrictions, provided that as they are in compliance with the State's international obligations."

20. Mr. POCAR, supported by Ms. MEDINA QUIROGA, Mr. YALDEN and Mr. BUERGENTHAL, proposed that the sixth sentence should be deleted as superfluous, since it was obvious that a person who had entered a State illegally but whose status had later been regularized must be considered as being lawfully within the territory.

21. Mr. BUERGENTHAL proposed, therefore, that the words "In that sense", at the beginning of the seventh sentence, should be replaced by the words "In that connection".

22. Ms. MEDINA QUIROGA said that she would like to see a reference included at that point to article 12 of the Covenant.

23. Mr. SCHEINEN, supported by Mr. KLEIN, said that footnote No. 3 should be retained because the Celepli v. Sweden case established an important principle with respect to the meaning of the word "lawfully" in article 12, paragraph 1, of the Covenant.

24. The CHAIRPERSON, summarizing the amendments on which there appeared to be a consensus, said that: (a) the words "In principle" were to be retained at the beginning of the second sentence, the square brackets being removed; (b) the third sentence was to be modified along the lines proposed by Mr. Kretzmer; (c) the fourth, fifth and sixth sentences were to be deleted; (d) at the beginning of the seventh sentence, the words "In that sense" were to be replaced by "In that connection, for the purposes of article 12,"; (e) footnote No. 3 was to be retained, without square brackets; and (f) the rest of the paragraph was to remain unchanged.

25. Paragraph 5 was adopted, with the aforesaid amendments.

Paragraph 6

26. Mr. KRETZMER said that the first sentence of the paragraph read: "The right to move around freely relates to the whole territory of a State, covering also territories for which a State is internationally responsible". He had difficulty with the second half. Article 12, paragraph 1, of the Covenant stated that everyone lawfully within the territory of a State had the right to liberty of movement within that territory and freedom to choose his residence. There was no reference to leaving the territory of a State. If, in the text under consideration, the Committee was covering the right to leave a territory for which a State was internationally responsible and to enter the territory of that State, it went much further than the Covenant required. If, on the other hand, it was a matter of moving around inside the territory for which a State was internationally responsible, that right was self-evident since, if the Covenant applied to the territory, so did article 12. Consequently, either the second half of the sentence went beyond the requirements of the Covenant or it was superfluous.

27. Mr. ANDO said he thought that a long discussion would be needed to define what was meant by "covering also territories for which a State is internationally responsible". Consequently, it would be better to delete the phrase.

28. Lord COLVILLE said he found the second half of the first sentence unacceptable.

29. Mr. EL SHAFEI said he was in favour of retaining the sentence as it stood.

30. Mr. BHAGWATI said that, in practice, under a State's domestic law, an alien might be admitted to enter a specific part of the territory. In such a case, the sentence as it stood would mean that the person in question had the right to move freely around the entire territory of the State concerned, although he had been admitted to enter a given part only and, possibly, subjected to certain restrictions. The proposed text went too far.

31. Mr. POCAR said that Mr. Bhagwati's comments were justified but he drew attention to the last sentence of paragraph 6, which related to possible restrictions which could be applied if they were in conformity with the rules. Moreover, to allay the anxieties of Lord Colville and others, he recalled that, at the time of the ratification of the Covenant, the Government of the United Kingdom had reserved the right to interpret the provisions of article 12, paragraph 1, concerning the territory of a State as applying separately to each of the territories making up the United Kingdom and its dependencies.

32. The CHAIRPERSON said that other States parties had also entered reservations on the subject of article 12. Consequently, it might be better to retain the terms of article 12, paragraph 1, without developing them.

33. Ms. MEDINA QUIROGA did not think it could be said that the territories for which a State was internationally responsible were on an equal basis with the territory of the State. In her view, the first sentence of paragraph 6 meant that article 12 must apply also to the territories for which a State was internationally responsible.

34. Mr. ANDO said it might, perhaps, be necessary to restore, at the beginning of paragraph 6, some of the contents of paragraph 1 ("Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence") which had been deleted.

35. Mr. BHAGWATI said he agreed with Ms. Medina Quiroga and thought that the second part of the first sentence should be retained.

36. The CHAIRPERSON said that retention of the phrase could cause problems, since a State could be internationally responsible for a territory although it had lost part of its domestic control, as a result, for instance, of internal self-government provisions. It would be difficult to reconcile the two positions.

37. Mr. KLEIN said he would try to redraft the text of paragraph 6 in the light of the comments that had been made. The first sentence would read: "The right to move around freely relates to the whole territory of a State.", the second part of the sentence being deleted. The second sentence concerning federal States would be retained. The third sentence would read: "According

to article 12, paragraph 1, a person is entitled to move from one place to another and to establish himself at any particular place". The text added to that sentence took up the substance of paragraph 1, which had been deleted.

38. Mr. POCAR requested that the word "around" in the first sentence be deleted.

39. Mr. BHAGWATI said that, in the penultimate sentence, it would be better if the words "motive or purpose" were replaced by "object or reason". In the last sentence, the word "rules" should be replaced by "provisions".

40. The CHAIRPERSON said that Mr. Klein's modified text for paragraph 6 had been amended or corrected by Mr. Pocar and Mr. Bhagwati. In the French version, the words "d'un motif ou d'un but should, accordingly, be replaced by d'un but et d'un objet.

41. Paragraph 6, as amended, was adopted.

The meeting rose at 6 p.m.